

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SIMPLEAIR, INC.

Plaintiff,

VS.

MICROSOFT CORPORATION, MOTOROLA
MOBILITY, INC., NOKIA CORPORATION,
NOKIA INC., SAMSUNG ELECTRONICS
CO., LTD., SAMSUNG ELECTRONICS
AMERICA, INC., SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC,
SONY ERICSSON MOBILE
COMMUNICATIONS AB, SONY ERICSSON
MOBILE COMMUNICATIONS (USA), INC.,
ERICSSON INC., FUTUREWEI
TECHNOLOGIES, INC. (D/B/A/
HUAWEI TECHNOLOGIES (USA),
HUAWEI TECHNOLOGIES CO., LTD.,
HTC CORPORATION, and LG ELECTRONICS
MOBILECOMM U.S.A., INC.,

Defendants.

Case No. 2:11-cv-00416 (DF)

JURY TRIAL DEMANDED

**FUTUREWEI TECHNOLOGIES, INC. ANSWER AND COUNTERCLAIMS
TO PLAINTIFF'S COMPLAINT**

Defendant Futurewei Technologies, Inc., by and through its undersigned counsel, hereby presents its Answer to Plaintiff SimpleAir, Inc.’s (“SimpleAir”) Complaint, filed September 15, 2011 (the “Complaint”).

INTRODUCTION

1. Futurewei is without knowledge or information sufficient to form a belief as to whether SimpleAir owns U.S. Patent Nos. 7,035,914 (the '914 patent) or 6,021,433 (the

‘433 patent). Futurewei admits that the faces of the ‘914 and ‘433 patents indicate that they are both entitled “System and Method for Transmission of Data.” Futurewei denies that it committed any acts of patent infringement alleged in the complaint, including those alleged in this paragraph.

JURISDICTION AND VENUE

2. Futurewei admits that the complaint alleges patent infringement under the Patent Laws of the United States. Futurewei admits that this Court has jurisdiction over patent infringement actions under 28 U.S.C. § 1338(a).

3. Solely with respect to Futurewei and for the purpose of this action, and without waiving any defense of improper venue in connection with any other cause of action or claim, Futurewei does not contest that venue properly lies in this district, but Futurewei denies that this venue is more convenient than other venues. Futurewei denies that it has committed or is responsible for any acts of infringement in the Eastern District of Texas or elsewhere. With respect to the other defendants, Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

PLAINTIFF SIMPLEAIR, INC.

4. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

THE PATENTS

5. Futurewei admits that the face of the ‘914 patent indicates that it issued on April 25, 2006 and that the face of the ‘433 patent indicates that it issued on February 1, 2000.

6. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

DEFENDANTS

7. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

8. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

9. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

10. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

11. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

12. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

13. Futurewei admits that it is a corporation organized and existing under the laws of Texas with its principal place of business at 5700 Tennyson Parkway, Suite #500, Plano, Texas 75024. On information and belief, Futurewei admits that that Huawei Technologies Co., Ltd. is a corporation organized and existing under the laws of China, with its principal place of business at Huawei Base, Bantain, Longgang District, Shenzhen 518129, P.R. China. Futurewei objects to any collective reference to Futurewei and Huawei Technologies Co., Ltd.

14. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

15. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

16. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

FIRST CLAIM FOR PATENT INFRINGEMENT ('914 PATENT)

17. Futurewei incorporates its responses to paragraph 1-16 above.

18. Futurewei denies the allegations in this paragraph of the Complaint.

19. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

20. Futurewei denies the allegations in this paragraph of the Complaint.

21. Solely with respect to Futurewei, Futurewei denies the allegations in this paragraph of the complaint. With respect to the other defendants, is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

22. Futurewei denies the allegations in this paragraph of the Complaint.

23. Futurewei admits that SimpleAir demands a trial by jury.

SECOND CLAIM FOR PATENT INFRINGEMENT ('433 PATENT)

24. Futurewei incorporates its responses to paragraph 1-16 above.

25. Futurewei denies the allegations in this paragraph of the Complaint.

26. Futurewei is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

27. Futurewei denies the allegations in this paragraph of the Complaint.

28. Solely with respect to Futurewei, Futurewei denies the allegations in this paragraph of the complaint. With respect to the other defendants, is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph of the Complaint.

29. Futurewei denies the allegations in this paragraph of the Complaint.

30. Futurewei admits that SimpleAir demands a trial by jury.

PRAYER FOR RELIEF

Futurewei denies that SimpleAir is entitled to any of the relief requested in SimpleAir's Prayer for Relief..

DEFENSES AND AFFIRMATIVE DEFENSES

First Defense

On information and belief, Futurewei does not infringe and has not infringed, directly or indirectly, any valid claim of the '914 or '433 patents.

Second Defense

On information and belief, of the '914 or '433 patents are invalid under one or more of the provisions in Title 35 of the United States Code, including §§ 101, 102, 103, and 112.

Third Defense

On information and belief, all or some of SimpleAir's claims for relief against Futurewei for infringement of the of the '914 or '433 patents are barred by the doctrine of laches.

Fourth Defense

On information and belief, some or all of SimpleAir's damages, if any, are limited under 35 U.S.C. § 287.

Fifth Defense

SimpleAir's claims against Futurewei are barred in whole or in part because Futurewei has been improperly joined to this action.

COUNTERCLAIMS

1. Counter-Plaintiff Futurewei Technologies, Inc.. (“Futurwei”) is a Texas corporation, with its principal place of business in Plano, Texas.

2. In its complaint, Counter-Defendant SimpleAir, Inc. (“SimpleAir”) asserts that it is a corporation organized and existing under the laws of Texas.

3. These are counterclaims for a declaratory judgment of noninfringement and invalidity that arise under the Declaratory Judgment Act, specifically, 28 U.S.C. §§ 2201 and 2202, and the Patent Act, 35 U.S.C. § 100, et seq. Jurisdiction in this Court is proper pursuant to 28 U.S.C. § 2201(a).

4. Counter-Defendant has chosen this venue to enforce its patents. Venue is proper in this Court and judicial district for counterclaims pursuant to 28 U.S.C. §§ 1391 and 1400(b).

FIRST COUNTERCLAIM

NONINFRINGEMENT OF THE ASSERTED PATENTS

5. Futurwei realleges and incorporates herein by reference Paragraphs 1-4 of its Counterclaims, above.

6. SimpleAir has made allegations that Futurewei infringes the ‘914 and ‘433 patents (“the Asserted Patents”) through the manufacture, use, sale, offer for sale, or importation of certain products or services of Futurewei or Huawei Technologies Co., Ltd..

7. SimpleAir’s actions and allegations have created a case or controversy between Counter-Plaintiff and Counter-Defendant.

8. Products made, used, sold, offered for sale, or imported by Futurewei lack at least one requirement of the inventions claimed in the Asserted Patent.

9. Futurewei is entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201 that its accused products do not infringe the Asserted Patent.

SECOND COUNTERCLAIM

INVALIDITY OF THE ASSERTED PATENTS

10. Futurewei realleges and incorporates herein by reference Paragraphs 1-9 of its Counterclaims above.

11. Claims of the '914 and '433 patents are invalid, *inter alia*, for at least one of the following reasons: they are directed to unpatentable subject matter under 35 U.S.C. § 101; they are anticipated under 35 U.S.C. § 102; they are obvious under 35 U.S.C. § 103; the specification does not comply with 35 U.S.C. § 112, first paragraph; and the claims do not comply with 35 U.S.C. § 112, second and sixth paragraphs.

12. Futurewei is entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201 that claims of the Asserted Patent are invalid.

13. Futurewei demands a jury trial as to all elements so triable.

PRAYER FOR RELIEF

Wherefore, Futurewei respectfully prays that:

- a. The Complaint be dismissed with prejudice;
- b. The Court deny all relief sought by SimpleAir;
- c. This Court adjudge, declare, and decree that all of the claims of the '914 and '443 patent are invalid, and that all of the claims of the '914 and '443 patent have not been infringed by Futurewei;

d. This Court issue a judgment declaring this case to be exceptional in favor of Futurewei under 35 U.S.C. § 285, and award to Futurewei its reasonable attorneys' fees and other expenses incurred in connection with this action;

e. This Court issue judgment awarding Futurewei its costs of suit incurred in this action; and

f. This Court grant Futurewei such other further relief to which it may be entitled.

Dated: December 2, 2011

Respectfully submitted,

/s/ Scott F. Partridge

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**ATTORNEY FOR DEFENDANT
FUTUREWEI TECHNOLOGIES, INC.**

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served this 2nd day of December, 2011 with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Scott F. Partridge
Scott F. Partridge